

Sitka Sound Seafoods, a Division of North Pacific Processors, Inc.¹ and International Longshoremen's and Warehousemen's Union, Local 200, AFL-CIO. Case 19-CA-25985

November 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on June 9, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on July 17, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to provide information, following the Union's certification in Case 19-RC-13479. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint.

On August 14, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On August 18, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish requested information to the Union, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's requests to bargain and for information. The Respondent admits that by letter dated December 10, 1998, the Union requested the Respondent to furnish it with the following information: all written policies and handbooks of the Respondent that affect Unit employees' terms and conditions of employment ("Policies and Handbooks"). The Respondent's answer admits that it refused to provide this information but denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established, however, that information concerning the terms and conditions of employment of unit employees is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Washington corporation, with an office and place of business in Sitka, Alaska, where it is engaged in the business of processing and nonretail sale of seafood products. The Respondent, during the 12-month period preceding issuance of the complaint, which period is representative of all material

cluded only seasonal employees, the eligibility formula included those seasonal employees who met the Board's traditional eligibility criteria as well as those who had worked for 30 days or more during the 12 months preceding the eligibility date. By contrast, in the instant case, unit work is performed throughout the year by a core group of employees whom the Respondent maintains on a "seniority list," as well as by "seasonal" employees, who work sporadically. Under these circumstances, we find the different eligibility formulas crafted by the Regional Directors in these cases to reflect only the unique and differing operations of these employers in this nontraditional industry.

Member Hurtgen does not reach the issues resolved above. As his colleagues concede, the Respondent is seeking to raise, for the first time, an asserted conflict with *Saltwater*. This matter could have been raised in the underlying representation case. Based on well-settled precedent (*Pittsburgh Plate Glass*, supra), Member Hurtgen would not permit the Respondent to raise this matter now. Thus, he does not resolve this belatedly raised issue.

¹ The name of the Respondent is corrected as set forth in the Respondent's answer to the complaint which conforms with the parties' pre-election hearing stipulation.

² The Respondent's objections were fully considered by the Board in the representation proceeding. See 325 NLRB 685 (1998). Indeed, as noted by the Regional Director, the seasonal/cyclical issues and the eligibility formula were considered at the time the Board denied the request for review of the Decision and Direction of Election. Accordingly, in agreement with the Acting General Counsel, we find that the Respondent is barred from raising these issues in this proceeding. Member Hurtgen did not participate in the representation case. However, he agrees that these issues cannot be relitigated in this case.

In its brief in opposition to the General Counsel's Motion for Summary Judgment, the Respondent contends for the first time that the Regional Director's exclusion from voting eligibility of seasonal employees hired in 1997 who had not worked for the Respondent in previous years conflicts with the Board's decision in *Saltwater, Inc.*, 324 NLRB 343 (1997). We find no merit in the Respondent's contention. As the Board observed in *Saltwater*, "In nontraditional industries, such as the instant fishing observer industry, the Board has permitted the utilization of eligibility formulas which take into account the peculiarities of employment in that industry." In that case, where the unit in-

times, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000.

The Respondent, during the same period of time, sold and shipped goods or provided services from its facilities within the State of Alaska to customers outside the State, or sold and shipped goods or provided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held December 4, 1997, the Union was certified on January 15, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time, and seasonal production and maintenance employees employed by the Employer at its Sitka, Alaska facility; but excluding all office clerical employees and guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About December 10, 1997, the Union, by letter, requested that the Respondent recognize and bargain and to furnish information, and, since about December 10, 1997, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after December 10, 1997, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Sitka Sound Seafoods, a division of North Pacific Processors, Inc., Sitka, Alaska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Longshoremen's and Warehousemen's Union, Local 200, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time, and seasonal production and maintenance employees employed by the Employer at its Sitka, Alaska facility; but excluding all office clerical employees and guards and supervisors as defined by the Act.

(b) Furnish the Union the information that it requested on December 10, 1997.

(c) Within 14 days after service by the Region, post at its facility in Sitka, Alaska, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respon-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

dent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 10, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Longshoremen's and Warehousemen's Union,

Local 200, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, regular part-time, and seasonal production and maintenance employees employed by us at our Sitka, Alaska facility; but excluding all office clerical employees and guards and supervisors as defined by the Act.

WE WILL furnish the Union the information it requested on December 10, 1997.

SITKA SOUND SEAFOODS, A DIVISION
OF NORTH PACIFIC PROCESSORS, INC.